IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPEAL NO. 738 OF 1992.

The State of Maharashtra. ..Appellant.

vs.

1. Ajimoddin Faimuddin.
2. Pramod Rangnath Ghodke ..Respondents.

Shri A.S. Shitole, A.P.P. for the State.
Shri Vinod V. Savaje holding for Shri Prafulla Shah for the respondents.

CORAM: V.M.KANADE,J.
DATED: 03-02-2005.

ORAL JUDGMENT:

1. The State has filed this appeal challenging the judgment and order passed by the Judicial Magistrate, F.C., (Rly.), Manmad, in Regular Criminal Case No. 56 of 1989. By the said judgment and order, the trial Court acquitted the accused of the offence punishable under section 3(a) of the Railway Property Unlawful Possession Act, 1966. The prosecution case is that on 15.3.1989 the accused Nos. 1 and 2 were found in unlawful possession of 20 pieces of scrap which was valued at Rs. 1,000/- belonging to Indian Railways and which was suspected to be stolen.

2. The learned A.P.P. appearing for the State has taken me through the judgment and order and also the evidence adduced by the prosecution. From the said evidence, it can be seen that the prosecution

witnesses have not identified that the muddemal property was in possession of the railway administration before it was found in possession of the accused. The essential ingredient of section 3 of the Railway Property Unlawful Possession Act, 1966 is that the accused should be in unlawful possession of the railway property. P.W.2 has admitted in his evidence that no register of scrap is maintained in the workshop. There is no evidence adduced by the prosecution that certain property was weighed and counted when it was seized. Further P.W.2 has admitted in his evidence that there was no marking on the property showing that the property belongs to the railways. It is difficult to come to a conclusion merely because certain properties were stolen from the railways and similar property i.e. bundle of copper was recovered from the accused, in the absence of any evidence that the property recovered from the accused was railway property, no conclusion or inference could be drawn from the fact that similar property which was stolen from the railways was recovered from the accused and, therefore, it was stolen property. None of the prosecution witnesses have identified that the muddemal property which was found in the truck was railway property. The trial Court, therefore, in my view, has correctly appreciated the evidence on record and has come to the conclusion that the prosecution has not proved its case beyond reasonable doubt. I do

not see any reason to interfere with the said judgment and order. The appeal is, accordingly, dismissed.